

MMC

530

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name GREENE PHILIP J.  
(Last) (First) (Initial)

Prisoner Number T98702/450-1-11U

Institutional Address ASP-P.O. BOX 9 AVENAL, CA. 93204

**FILED**  
JAN 30 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
**E-filing**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CV 08**

**0714**

PHILIP JASON GREENE  
Full Name of Petitioner

Case No. (To be provided by the clerk of court)

**(PR)**

vs.

HARTLEY - ASP WARDEN, et al.

PETITION FOR A WRIT OF HABEAS CORPUS

Name of Respondent  
(Warden or jailor)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition? THE 12022.7(a) 3 YEAR ENHANCEMENT IMPOSED BY ABUSE OF DISCRETION

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

SANTA CLARA COUNTY SUPERIOR COURT

Court

SAN JOSE, CALIFORNIA

Location

(b) Case number, if known 210721

(c) Date and terms of sentence 6/27/03 7 YEARS + 3 YRS PAROLE + RESTITUTION

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes ☒ No ☐

Where? AVENAL STATE PRISON - 1 KINGS WAY - AVENAL, CA, 95204

(Name of Institution)

(Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

VIOLATION OF PENAL CODE SECTION 273a(a)

PLUS GENERAL GBI ENHANCEMENT 12022.7(a)

UNDER 1203. + RESTITUTION 1202.4.

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐ Preliminary Hearing: Yes ☐ No ☒ Motion to Suppress: Yes ☒ No ☐  
L TO DISMISS ☒

4. How did you plead?

Guilty \_\_\_\_\_ Not Guilty ☒ Nolo Contendere \_\_\_\_\_

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury \_\_\_\_\_ Judge alone \_\_\_\_\_ Judge alone on a transcript ☒ GRAND JURY TX.  
PURSUANT TO: BUNNEIL V. SUPERIOR CT (1975) 13 CAL.3d 592

6. Did you testify at your trial? Yes \_\_\_\_\_ No ☒

7. Did you have an attorney at the following proceedings:

- (a) Arraignment ☒ Yes ☐ No  
 (b) Preliminary hearing ☐ Yes ☐ No  
 (c) Time of plea ☒ Yes ☐ No  
 (d) Trial ☒ Yes ☐ No  
 (e) Sentencing ☒ Yes ☐ No  
 (f) Appeal ☒ Yes ☐ No  
 (g) Other post-conviction proceeding Yes ☐ No ☒

8. Did you appeal your conviction? ☒ Yes ☐ No

(a) If you did, to what court(s) did you appeal?

Court of Appeal	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>FILED 2004/FEB.</u>	<u>AFFIRMED 1/2005</u>
		(Year)	(Result)
Supreme Court of California	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>FILED 2005</u>	<u>PETITION FOR REVIEW DENIED</u>
		(Year)	(Result)
Any other court	Yes _____ <input checked="" type="checkbox"/> No	_____	
		(Year)	(Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes \_\_\_\_\_ No ☒

(c) Was there an opinion? ☒ Yes ☐ No

(d) Did you seek permission to file a late appeal under Rule 31(a)?  
Yes \_\_\_\_\_ No N/A

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court SUPERIOR COURT, COURT OF APPEAL, AND STATE SUPREME CT.

Type of Proceeding HABEAS CORPUS PETITION

Grounds raised (Be brief but specific):

a. ABUSE OF DISCRETION BY SENTENCING COURT.

b. \_\_\_\_\_

c. \_\_\_\_\_

d. \_\_\_\_\_

Result SEE EXHIBITS C/D/E DENIED Date of Result \_\_\_\_\_

II. Name of Court NORTHERN DISTRICT COURT

Type of Proceeding HABEAS CORPUS PETITION

Grounds raised (Be brief but specific):

a. VIOLATION OF DUE PROCESS AND SPEEDY TRIAL

b. VIOLATION OF DUE PROCESS BY KNOWINGLY SUPPRESSING EXCUL. EVIDENCE

c. VIOLATION OF DUE PROCESS BY PROSECUTING VINDICTIVELY.

d. \_\_\_\_\_

Result IN PROCESS (TRAVERSE FILED 9/2007) Date of Result \_\_\_\_\_

III. Name of Court \_\_\_\_\_

Type of Proceeding \_\_\_\_\_

Grounds raised (Be brief but specific):

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

Result \_\_\_\_\_ Date of Result \_\_\_\_\_

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? ☒ Yes ☐ No

NORTHERN DISTRICT COURT  
CASE # C-05-3433MMC (PR)  
TRAVERSE FILED 9/2007

(Name and location of court)

## B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: THE SENTENCING COURT VIOLATED PETITIONER'S 6<sup>TH</sup> AMENDMENT

RIGHT TO TRIAL BY JURY WHEN IT ABUSED ITS DISCRETION AND IMPOSED  
A 3 YEAR GBI ENHANCEMENT.

Supporting Facts: \_\_\_\_\_

SEE ATTACHED PAGE(S)

C1-1 THROUGH C1-5

Claim Two: \_\_\_\_\_

Supporting Facts: \_\_\_\_\_

Claim Three: \_\_\_\_\_

Supporting Facts: \_\_\_\_\_

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

THIS CLAIM HAS BEEN EXHAUSTED AT THE  
STATE LEVEL.



CLAIM ONE: THE SENTENCING COURT VIOLATED PETITIONER'S SIXTH AMENDMENT RIGHT TO TRIAL BY JURY, WHEN IT ABUSED ITS DISCRETION AND IMPOSED A 3 YEAR GBI ENHANCEMENT.

SUPPORTING FACTS: ON MAY 1, 2003, PETITIONER WAS FOUND GUILTY OF VIOLATING CALIFORNIA PENAL CODE SECTION 273a(a) WITH AN ENHANCEMENT OF GREAT BODILY INJURY UNDER SECTION 12022.7(a) BY JUDGE KEVIN MURPHY, IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA. (SEE EXHIBIT A - LEGAL STATUS SUMMARY AND ABSTRACT OF JUDGEMENT.). SUCH FINDING OF "GUILT" WAS BASED UPON THE REVIEW AND SUBMISSION OF THE GRAND JURY TRANSCRIPTS IN ACTION #210721 PURSUANT TO BUNNELL V. SUPERIOR COURT (1975) 13 CAL.3D 592 - WHICH "AN AGREEMENT TO SUBMIT A CASE FOR A DECISION ON TRANSCRIPT DOES NOT, AND CANNOT, SUPERCEDE THE PLEA OF 'NOT GUILTY' WHICH NECESSARILY PRECEDES THE AGREEMENT." ADDITIONALLY, "THE FINDING OF GUILT IS A FOREGONE CONCLUSION."

HOWEVER, THE U.S. SUPREME COURT STATED THAT A GRAND JURY ONLY DETERMINES AND ISSUES A PROBABLE CAUSE FINDING AND DOES NOT DETERMINE GUILT OR INNOCENCE, (U.S. V. CALANDRA, 38 LED 2d 561 (1974)), AND THUS THE INDICTMENT ISSUED IS BASED UPON THE PREPONDERANCE OF THE EVIDENCE PRESENTED, NOT BY THE USE OF A ~~B~~ BEYOND A REASONABLE DOUBT STANDARD.

THEREFORE, THE FINDING OF GUILT BY THE TRIAL COURT WAS DETERMINED, BASED UPON THE REVIEW OF THE SAME EVIDENCE PRESENTED TO THE GRAND JURY, AND BY THE PREPONDERANCE OF THE 'EVIDENCE,' NOT BY THE UTILIZATION OF BEYOND A REASONABLE DOUBT.

ON JUNE 27, 2003, JUDGE KEVIN MURPHY SENTENCED PETITIONER TO THE MID-TERM OF 4 YEARS FOR VIOLATING PENAL CODE SECTION 273a(a) AND IMPOSED A CONSECUTIVE 3 YEARS FOR THE GBI ENHANCEMENT FOUND TRUE UNDER SECTION 12022.7(a). (EXHIBIT A). THIS SENTENCE WAS IMPOSED WHILE PETITIONER HAD BEEN OUT ON BAIL FOR 3 YEARS, 8 MONTHS WITHOUT AS MUCH AS COMMITTING AN INFRACTION, BEING GAINFULLY EMPLOYED, MARRIED WITH PETITIONER BEING THE SOLE ECONOMIC PROVIDER, OBTAINING 2 SUCCESSFUL DISMISSALS OF THE SAME ACTION - E9911820 AND 210637 AND NOT HAVING ANY PRIOR JUVENILE OR ADULT RECORD. PETITIONER'S LIFE DID NOT REFLECT ANY PATTERN OF VIOLENCE OR CRIMINAL BEHAVIOR AND THEREFORE, COULD HARDLY BE DEEMED A DANGER TO SOCIETY. THE SENTENCING COURT FAILED TO TAKE INTO ACCOUNT ANY MITIGATING FACTOR(S).



THE SENTENCE IMPOSED BY THE COURT WAS AN ABUSE OF DISCRETION, BIASED AND PREJUDICIAL. "EVEN WHEN A COURT IMPOSES THE 'PRESUMPTIVE' MID-TERM, ITS DECISION IS REVIEWABLE FOR ABUSE OF DISCRETION - THAT IS, ITS DECISION TO SENTENCE AT THE 'STANDARD' TERM MUST BE REASONABLE." (PEOPLE V. CATTANEO (1990) 217 CAL. APP. 3D 1577, 1587-1588) AND (CUNNINGHAM V. CALIFORNIA, 127 S. CT. 856 (2007)).

PETITIONER SOUGHT DIRECT APPEAL BASED UPON CALIFORNIA'S TWO-DISMISSAL RULE UNDER SECTION 1587 IN THE SIXTH APPELLATE DISTRICT. JUDGE P. BAMAIRE-MANOUKIN ISSUED THE OPINION "UNPUBLISHED" AFTER SEVERELY MISCONSTRUING THE LEGISLATIVE INTENT OF EXCUSABLE NEGLIGENCE IN FAVOR OF THE PROSECUTION AND FAILING TO RULE THAT THE PROSECUTION'S SUPPRESSION OF EXCULPATORY EVIDENCE WAS IN BAD FAITH. PETITIONER WAS DENIED A REHEARING WITHOUT REASON AND THE STATE SUPREME COURT DENIED REVIEW WITHOUT REASON.

PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA ON MARCH 8, 2007 - SUCH PETITION ADDRESSED ISSUES BROUGHT FORTH IN "CUNNINGHAM" BY THE U.S. SUPREME COURT THAT: "CALIFORNIA'S DETERMINATE SENTENCING LAW VIOLATES A DEFENDANT'S RIGHT TO TRIAL BY JURY, AS SAFEGUARDED BY THE 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS OF THE U.S. CONSTITUTION. "ADDITIONALLY, PETITIONER CITED THAT HIS "SENTENCE WAS ENHANCED BASED ON FACTS THAT WERE NOT CHARGED TO AND FOUND BY A JURY," (BLAKELY V. WASHINGTON, 124 S. CT. 2531 (2004)), AND THAT THE GBI ENHANCEMENT WAS "NOT BASED ON JURY FINDINGS OF ALL ESSENTIAL FACTS BEYOND A REASONABLE DOUBT," (APPENDI V. NEW JERSEY, 530 U.S. 466 (2000)), AND WAS ONLY FOUND TRUE BY A JUDGE UTILIZING A PREPONDERANCE OF THE EVIDENCE, NOT BY THE UTILIZATION OF A BEYOND A REASONABLE DOUBT STANDARD. SUCH METHOD WAS CITED BY THE U.S. SUPREME COURT IN "CUNNINGHAM" THAT ENHANCEMENTS ARE TO BE FOUND BY A JURY BEYOND A REASONABLE DOUBT AND THAT SUCH FAILURE VIOLATES ONE'S 6<sup>TH</sup> AMENDMENT RIGHT TO TRIAL BY JURY.

IT IS CITED IN "CUNNINGHAM" THAT: "THE MID-TERM PRESCRIBED UNDER CALIFORNIA LAW, IS THE RELEVANT STATUTORY MAXIMUM." IN THE SAME RULING, "ANY FACT THAT EXPOSES A DEFENDANT TO A SENTENCE IN EXCESS OF THE STATUTORY MAXIMUM, MUST BE FOUND BY A JURY, NOT A JUDGE, AND BE ESTABLISHED BEYOND A REASONABLE DOUBT, NOT MERELY BY A PREPONDERANCE OF THE EVIDENCE."

ON MARCH 15, 2007, JUDGE LINDA CONDRON OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA, ISSUED HER RULING STATING: "CUNNINGHAM

DOES NOT APPLY TO ENHANCEMENTS THAT ARE SEPARATELY CHARGED AND FOUND TO BE TRUE AND WHICH MAY BE IMPOSED CONSECUTIVELY. " (CITING: PEOPLE V. HERNANDEZ (2007) LEXIS 257). (EXHIBIT C).

ON APRIL 19, 2007, PETITIONER SOUGHT RELIEF IN THE CALIFORNIA COURT OF APPEAL - SIXTH APPELLATE DISTRICT - ON A PETITION FOR A WRIT OF HABEAS CORPUS.

ON JUNE 8, 2007, JUDGE P. BAMATTRE-MANDOUKIAN AND JUDGE MIHARA FILED A "POST-CARD" DENIAL: "THE PETITION FOR WRIT OF HABEAS CORPUS IS DENIED." (EXHIBIT D). THUS, IT IS DEDUCED THAT THE COURT OF APPEAL DECISION IS SPECIFICALLY RELIANT UPON THE FAULTY FINDINGS OF THE SUPERIOR COURT ISSUED BY JUDGE LINDA CONDRON.

PETITIONER SOUGHT RELIEF IN THE CALIFORNIA SUPREME COURT ON A HABEAS CORPUS PETITION - FILED JUNE 25, 2007. SUCH PETITION WAS ALSO ISSUED A "POST-CARD" DENIAL BY CHIEF JUSTICE GEORGE IN CASE #S153879, (EXHIBIT E), ON DECEMBER 12, 2007.

THE LEGAL MANDATED LANGUAGE CONTAINED IN "CUNNINGHAM" STATES: "THE PENAL CODE PERMITS ELEVATION OF A SENTENCE ABOVE THE STATUTORY MAXIMUM BASED ON SPECIFIED STATUTORY ENHANCEMENTS... P.C. SECTION 667, ALSO BLACK, 35 CAL. 4TH @ 1257... STATUTORY ENHANCEMENTS MUST BE CHARGED IN THE INDICTMENT, AND THE UNDERLYING FACTS MUST BE PROVED TO A JURY BEYOND A REASONABLE DOUBT..." WHILE ADDITIONALLY STATING: "THE CALIFORNIA SUPREME COURT STATED IN 'BLACK' THAT THE DSL REQUIRES STATUTORY ENHANCEMENTS - E.G. - THE USE OF A FIREARM OR OTHER DANGEROUS WEAPON, INFLECTION OF GREAT BODILY INJURY, P.C. SECTIONS 12022, 12022.7-8 (WEST 2000 & SUPP. 2006) - TO BE CHARGED IN THE INDICTMENT, AND THE UNDERLYING FACTS BE PROVED TO A JURY BEYOND A REASONABLE DOUBT." (35 CAL. 4TH @ 1257; 113 P3d @ 545). "THESE ENHANCEMENTS, WHICH ADD ADDITIONAL YEARS TO THE BASE TERM, MUST BE PLEADED AND PROVED TO A JURY BEYOND A REASONABLE DOUBT." (P.C. SECTION 1170.1(e)).

THE LEGAL LANGUAGE OF "MUST" IS A STATUTORY MANDATE THAT LEAVES NO ROOM FOR CONSTRUING THE LAW.

HOWEVER, WHERE PERMITTED BY STATUTE, A JUDGE MAY USE A FACT QUALIFYING AS AN ENHANCER TO IMPOSE THE UPPER TERM RATHER THAN AN ENHANCED SENTENCE. (IBID - "CUNNINGHAM" - RULE 4.420 (C) CA. RULES OF COURT.); (ALSO SEE JONES V. UNITED STATES, 526 U.S. 227 (1999); AND HARRIS V. UNITED STATES, 153 LED 2d. 524 (2002)).

1 IN THE PRESENT CASE, PETITIONER AGREES THAT, THE ENHANCEMENT OF  
 2 GREAT BODILY INJURY - SECTION 12022.7(a) - WAS CHARGED IN THE GRAND JURY INDICT-  
 3 MENT #210721 ON APRIL 3, 2002. HOWEVER, IN NO WAY, WITHIN THE CONTEXT OF THE  
 4 LEGAL MANDATED LANGUAGE, NOR IN THE PROCEDURAL HISTORY OF THE PRESENT CASE,  
 5 WAS SUCH ENHANCEMENT EVER PROVEN, PRESENTED, OR PLEADED TO A JURY BEYOND  
 6 A REASONABLE DOUBT, AS JUDGE LINDA CONDRON OF THE SUPERIOR COURT ALLEGES IN  
 HER RULING AS CONTAINED WITHIN EXHIBIT C.

7 THE CASE IN ACTION #210721 WAS DECIDED UPON THE SUBMISSION ON  
 8 THE GRAND JURY TRANSCRIPTS AS CITED IN THIS PETITION. HOWEVER, THIS AGREE-  
 9 MENT UNDER "BUNNEL," THOUGH CONSIDERED A "TRIAL" TO THE MOST LIBERAL  
 10 STANDARDS UNDER THE LAW, CANNOT BE CONSIDERED A TRIAL BY JURY; AND THE  
 11 FINDINGS OF "GUILT" BY JUDGE KEVIN MURPHY CANNOT BE CONSIDERED THAT ANY  
 12 SUCH FINDING WAS BASED UPON THE UTILIZATION OF A "BEYOND A REASONABLE  
 13 DOUBT STANDARD," BUT ONLY THAT OF A UTILIZATION OF A "PREPONDERANCE OF  
 THE EVIDENCE," BY A JUDGE - BASED ON A PROBABLE CAUSE FINDING.

14 THE U.S. SUPREME COURT FULLY REASONED IN "CUNNINGHAM" THAT  
 15 THE METHODS OF STANDARDS "BEYOND A REASONABLE DOUBT" AND "PREPONDERANCE  
 16 OF THE EVIDENCE" ARE NOT THE SAME.

17 THEREFORE, JUDGE MURPHY'S FINDING OF GUILT, BASED UPON THE  
 18 PREPONDERANCE OF THE EVIDENCE, TO DETERMINE THE 12022.7(a) ENHANCEMENT  
 19 TRUE BY THE SIMPLE REVIEW OF THE GRAND JURY TRANSCRIPTS IN ACTION #210721,  
 20 VIOLATED PETITIONER'S 6<sup>TH</sup> AMENDMENT RIGHT TO HAVE A JURY OF HIS PEERS  
 21 DETERMINE SUCH FACTS BEYOND A REASONABLE DOUBT - AS DR. CATHERINE ALBIN'S  
 22 TESTIMONY REGARDING FRACTURES SPECIFICALLY STATED THAT: THOUGH SHE THOUGHT  
 23 FRACTURE(S) ~~WAS~~ EXISTED, SHE ALSO STATED CLEARLY IN THE SAME TRANSCRIPTS  
 AND SENTENCE THAT SUCH COULD NOT BE PROVEN. (SEE GRAND JURY TRANSCRIPTS IN  
ACTION #210721 - PAGE 104: 1-8), AS CONTAINED WITHIN THE RECORD ON APPEAL.

24 HOWEVER, IF THE METHOD TO FIND PETITIONER GUILTY BY A USE OF  
 25 THE PREPONDERANCE OF THE EVIDENCE, WHILE THE LAW CLEARLY MANDATES A USE  
 26 OF A "BEYOND A REASONABLE DOUBT STANDARD," REGARDING THE 12022.7(a)  
 27 ENHANCEMENT, IS ALLOWABLE, THE VERDICT BY SUPERIOR COURT JUDGE KEVIN  
 28 MURPHY - DOES NOT AUTHORIZE THE SENTENCE "AS CITED IN "CUNNINGHAM" - "A JURY'S  
 VERDICT DOES NOT AUTHORIZE THE SENTENCE."



1 SINCE PETITIONER WAS FOUND GUILTY BY A PREPONDERANCE OF THE  
2 EVIDENCE AND NOT BEYOND A REASONABLE DOUBT, AND PETITIONER NEVER ADMITTED TO  
3 COMMITTING A GBI, THE FACTS SHOW THAT THE SENTENCING COURT ABUSED ITS  
4 DISCRETION WHEN IT IMPOSED THE 3 YEAR CONSECUTIVE ENHANCEMENT ADDITIONAL  
5 TO THE 4 YEAR BASE TERM. THE COURT HAD THE AUTHORITY TO IMPOSE THE UPPER  
6 6 YEAR TERM BY USING THE GBI AND VOID THE CONSECUTIVE TERM, HOWEVER, THE  
7 COURT WRONGFULLY IMPOSED THE CONSECUTIVE THREE YEARS, AND THUS ABUSED ITS  
8 DISCRETION WHILE VIOLATING PETITIONER'S 6<sup>TH</sup> AMENDMENT RIGHT TO TRIAL BY JURY.

9 THEREFORE, THE RULING BY JUDGE LINDA CONDRON, AS RELIED UPON BY  
10 THE STATE COURTS, ERRED IN DENYING RELIEF.

11 PETITIONER THEREFORE PRAYS THAT THIS COURT ~~REVIEW~~ FULLY REVIEW  
12 THESE FACTS AND PROVIDE THE FOLLOWING:

- 13 1) ISSUE AN ORDER TO SHOW CAUSE;
- 14 2) GRANT AN EVIDENTIARY HEARING TO PROPERLY ADJUDICATE  
15 THESE FACTS;
- 16 3) APPOINT COUNSEL TO REPRESENT PETITIONER IN THESE  
17 PROCEEDINGS;
- 18 4) GRANT THE APPROPRIATE RELIEF BY VACATING THE 3  
19 YEAR CONSECUTIVE SENTENCE AND ORDER PETITIONER'S  
20 RELEASE FROM CDCR;
- 21 5) GRANT THE WRIT AND PROVIDE ANY FURTHER RELIEF  
22 THIS COURT DEEMS NECESSARY.

23 PETITIONER AVERS THAT HE HAS SET FORTH A PRIMA FACIE CASE  
24 FOR RELIEF.  
25  
26  
27  
28

SUPPORTING CASES, RULES, AND  
OTHER AUTHORITY IN SUPPORT OF  
CLAIM AND SUPPORTING FACT(S)

U.S. CONSTITUTIONAL AMENDMENTS: 6 / 14

CALIFORNIA PENAL CODE SECTIONS: 273a(a) / 12022.7(a) / 667 / 1170.1(e) / 12022 /

CALIFORNIA RULE(S) OF COURT: RULE 4.420(c)

U.S. SUPREME COURT CASE AUTHORITY:

1) CUNNINGHAM V. CALIFORNIA, ~~127~~ (2007), 127 S. CT. 856

2) U.S. V. CALANDRA, 38 LED2d 561 (1974)

3) BLAKELY V. WASHINGTON, 124 S. CT. 2531 (2004)

4) APPENDI V. NEW JERSEY, 530 U.S. 466 (2000)

5) JONES V. UNITED STATES, 526 U.S. 227 (1999)

6) HARRIS V. UNITED STATES, 153 LED2d, 524 (2002)

CALIFORNIA STATE CASE AUTHORITY

1) BUNNELL V. SUPERIOR COURT (1975) 13 CAL. 3d 592

2) PEOPLE V. CATTANEO (1990) 217 CAL. APP. 3d 1577, 1587-1588

3) PEOPLE V. HERNANDEZ (2007) LEXIS 257

4) PEOPLE V. BLACK (2005) 35 CAL. 4<sup>TH</sup> @ 1257 - 113 P3d @ 545 (2005)

OTHER AUTHORITY: A.E.D.P.A.

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

SEE PAGE(S)

C1-6

Do you have an attorney for this petition? Yes ☐ No ☒

If you do, give the name and address of your attorney:

N/A

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on JANUARY 22, 2008  
Date

  
Signature of Petitioner



1  
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7  
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11  
12  
13 EXHIBIT A

14 1) LEGAL STATUS SUMMARY

15 2) ABSTRACT OF JUDGEMENT  
16

17 Included in original filed  
18 w/ COURT on 3/8/07  
19  
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LEGAL STATUS SUMMARY TYPE- D CSP-S 02/18/2004 21:48

CDC NUMBER	NAME	ETHNIC	BIRTHDATE
T98702	GREENE, PHILIP, JASON	WHI	02/26/1970

TERM STARTS	MAX REL DATE	MIN REL DATE	MAX ADJ REL DT	MIN ADJ REL DT
07/07/2003	05/19/2010	05/08/2009	05/19/2010	05/08/2009

BASE TERM	4/00 + ENHCMNTS	3/00 = TOT TERM	7/00	FAROLE PERIOD	3 YRS
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## PRE-PRISON + POST SENTENCE CREDITS

CASE	P2900-5	P1203-3	P2900-1	CRC-CRED	MH-CRED	P4019	P2931	POST-SENT	TOT
210721		34				5		9	48

PSYCH REFERRAL PER P3002  
OTHER NOTIFICATION REQUIRED

RECV DT/ COUNTY/	CASE	SENTENCE DATE	CREDIT	OFFENSE
CNT OFF-CODE DESCRIPTION			CODE	DATE

## CONTROLLING PRINCIPAL &amp; CONSECUTIVE (INCLUDES ENHANCEMENTS/OFFENSES):

## --CONTROLLING CASE --

7/07/2003	SCL	210721	6/27/2003		
01 P273A(A)	ABUSE/ENDANGER CHILD			4	08/26/1999
	P12022.7(A)	01 INFL GBI		4	
PC 3058.9					

TRAN	DATE	END DATE	LOG NUMBER	RULE	NUMBER	ASSESS	DAY S	LOST	REST	DEAD
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BEG 07/07/2003	*****BEG BAL*****									
CURRENT PC BALANCE:	0	CURRENT BC BALANCE:	376							

**ABSTRACT OF JUDGMENT – PRISON COMMITMENT – DETERMINATE  
SINGLE, CONCURRENT OR FULL-TERM CONSECUTIVE COUNT FORM**

[Not to be used for multiple count convictions or for 1/3 consecutive sentences.]

CR-290.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SANTA CLARA</b>			
BRANCH OR JUDICIAL DISTRICT <b>HOJ</b>			
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: <b>PHILIP JASON GREENE</b>	DOB: <b>02-26-70</b>		CASE NUMBER <b>210721</b>
AKA: CII#: BOOKING INFORMATION: PFN CWW317 CEN: 02507788 <div style="text-align: center;"> <input type="checkbox"/> NOT PRESENT  <input type="checkbox"/> AMENDED ABSTRACT       </div>			
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT			
DATE OF HEARING <b>06-27-03</b>	DEPT. NO. <b>31</b>	JUDGE <b>KEVIN J. MURPHY</b>	
CLERK <b>P. COOPER</b>	REPORTER <b>T. HOLLAND</b>	PROBATION NUMBER OR PROBATION OFFICER <b>D. KILMER</b>	
COUNSEL FOR PEOPLE <b>R. HEY</b>		COUNSEL FOR DEFENDANT <b>C. MATTISON</b>	
		<input type="checkbox"/> APPTD.	

1. Defendant was convicted of the commission of the following felony:

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (Month/Date/Year)	CONVICTED BY		TERM L, M, U	TIME IMPOSED	
						Jury	Court		YRS.	MOS.
1	PC	273a(a)	Causing/Permitting a child to suffer or inflicting pain or suffering or endangering the health of a child	1999	05-01-03		<b>X</b>	<b>M</b>	<b>4</b>	<b>0</b>

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENTS.

COUNT	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
1	PC12022.7(a)	<b>3</b>							<b>3 0</b>

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENTS.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

4. ☐ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

5. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

Restitution Fine of: \$\_\_\_\_\_ per PC 1202.4(b) forthwith per PC 2085.5; \$\_\_\_\_\_ per PC 1202.45 suspended unless parole is revoked.

Restitution per PC 1202.4(f): ☒ **3,000** / ☐ Amount to be determined to: ☐ victim(s)\* ☐ Restitution Fund

(\*List victim name(s) if known and amount breakdown in item 7, below.)

Fine(s) [PA included]: \$\_\_\_\_\_ per PC 1202.5. \$\_\_\_\_\_ per VC 23550 or \_\_\_\_\_ days ☐ county jail ☐ prison in lieu of fine ☐ CC ☐ CS

Lab Fee \$\_\_\_\_\_ per HS 11372.5(a) for counts \_\_\_\_\_. ☐ Drug Program Fee of \$150+ PA\_\_\_\_\_ per HS 11372.7(a).

6. TESTING: a. ☐ AIDS pursuant to PC 1202.1 b. ☐ DNA pursuant to PC 296 c. ☐ other (specify):

Other orders (specify): **BAIL EXONORATED; MOTION TO STAY EXECUTION & JUDGMENT/RELEASE DEFT ON BAIL PENDING APPEAL -MOTION DENIED;**

**PROB DENIED; NO CONTACT W/VICTIM OR FAMILY/CO-DEFTS UNLESS AF BY APO;**

**\*STATE BOARD OF CONTROL & RESTITUTION \$152,531.18 TO VALLEY ME L CENTER; ADV OF 3 YRS PAROLE/APPEAL RIGHTS.**

8. TOTAL TIME IMPOSED excluding county jail term: 7 0

9. ☐ This sentence is to run concurrent with (specify):

10. Execution of sentence imposed

a. ☒ at initial sentencing hearing.

☐ at resentencing per recall of commitment. (PC 1170(d).)

b. ☐ at resentencing per decision on appeal.

☐ other (specify):

c. ☐ after revocation of probation.

11. DATE SENTENCE PRONOUNCED **06-27-03** CREDIT FOR TIME SPENT IN CUSTODY TOTAL OAYS: **39** INCLUDING: ACTUAL TIME **32** LOCAL CONDUCT CREDITS **5** ☐ 4019 ☒ 2933.1 SERVED TIME IN STATE INSTITUTION (number of days) ☐ DMH ☐ CDC ☐ CRC

12. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.

To be delivered to: ☒ reception center designated by Director, California Department of Corrections.

☐ Other (specify):

CLERK OF THE COURT: I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

**CATALINA LIRA NEVIUS**

*Catalina Lira Nevius*

DATE

**06-30-03**

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for the abstract of judgment. It may be used but must be referred to in this document.

Form Adopted for Mandatory Use

**ABSTRACT OF JUDGMENT – PRISON COMMITMENT – DETERMINATE  
SINGLE, CONCURRENT, OR FULL-TERM CONSECUTIVE COUNT FORM**

Penal Code  
§§ 1170, 1213, 1213.5

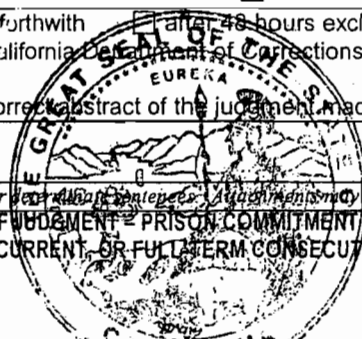


EXHIBIT ~~11~~ B

FOR 602 APPEAL  
GREENE - T98702  
ASP - GF4-37LOW

**INMATE/PAROLEE  
 APPEAL FORM**  
 CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

2. \_\_\_\_\_

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME <u>GREENE, P</u>	NUMBER <u>798702</u>	ASSIGNMENT <u>N/A</u>	UNIT/ROOM NUMBER <u>GF4-37 LOW</u>
--------------------------	-------------------------	--------------------------	---------------------------------------

A. Describe Problem: ON MAY 1, 2003, PETITIONER WAS FOUND GUILTY OF VIOLATING PENAL CODE SECTION 273A(A) AND SECTION 12022.7(A), BY JUDGE KEVIN MURPHY IN SANTA CLARA COUNTY SUPERIOR COURT. (SEE EXHIBIT A), SUCH "TRIAL" WAS BY SUBMISSION ON THE GRAND JURY TRANSCRIPTS IN ACTION #210721 PURSUANT TO BUNNEL V. SUPERIOR COURT (1975) 13 CAL. 1592, WHICH "AN AGREEMENT TO SUBMIT A CASE FOR DECISION ON TRANSCRIPT" DOES NOT, AND CANNOT, PRECEDE THE PLEA OF 'NOT GUILTY' WHICH NECESSARILY PRECEDES THE AGREEMENT. " ON JUNE 27, 2003, THE SENTENCING COURT SENTENCED PETITIONER TO THE MID-TERM OF (4) YEARS FOR VIOLATION OF SECTION 273A(A) AND ISSUED A CONSECUTIVE (3) YEAR TERM FOR SECTION 12022.7(A) (SEE EXHIBIT A).

If you need more space, attach one additional sheet.

B. Action Requested: DUE TO THE ABUSE OF DISCRETION BY THE SENTENCING COURT, PETITIONER WAS DENIED HIS 6TH AND 14TH AMENDMENT RIGHT TO TRIAL BY JURY - MINIMALLY RE: THE 12022.7(A) ENHANCEMENT, AND WAS IMPROPERLY PRESCRIBED THE MID-TERM OF (4) YEARS RE: SECTION 273A(A) VIOLATION. DUE TO SUCH ACTIONS BY THE COURT, THE CDCR HAS THE RIGHT AND DUTY TO VACATE THE IMPROPERLY

Inmate/Parolee Signature: [Signature]

Date Submitted: 2/4/07

C. INFORMAL LEVEL (Date Received: 2/7/07)

Staff Response: \_\_\_\_\_

"see attached"

Staff Signature: Daniel Rocco CCRA

Date Returned to Inmate: 2/9/07

**D. FORMAL LEVEL**

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification chrono, CDC 128, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: \_\_\_\_\_

Date Submitted: \_\_\_\_\_

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number: \_\_\_\_\_

CC: PERSONAL FILE  
 STEBBINS & ASSOCIATES  
 ATTORNEY CHRISTINE WATSON

PAGE 1 OF 5





(SECTION A' CONTINUED - 602 APPEAL - GREENE - T98702/GF4-37LOW)

PETITIONER WAS THUS REMANDED INTO CUSTODY AFTER 3 YEARS AND 9 MONTHS ON BAIL. PETITIONER WAS DENIED SUSPENDED SENTENCE W/ PROBATION AND DENTED BAIL PENDING DIRECT APPEAL. JUDGE KEVIN MURPHY STATED THAT THE 7 YEAR PRISON TERM AND 3 YEARS PAROLE HAD BEEN "PREDETERMINED." PETITIONER HAS NO PRIOR CRIMINAL RECORD, NO PRISON PRIORS, AND THE ECONOMICAL DEPENDENCY OF HIS FAMILY WAS SUBSTANTIAL. (U.S. V. GALANTE, 111 F3d. 1029 (2<sup>ND</sup> CIR. 1997); AND U.S. V. WINTERS, 117 F3d. 346 (7<sup>TH</sup> CIR. 1997)).

THE SENTENCE PRESCRIBED BY JUDGE KEVIN MURPHY ON JUNE 27, 2003 WAS/IS AN ABUSE OF DISCRETION IN ISSUING THE (3) YEAR CONSECUTIVE SENTENCE WHICH VIOLATES THE U.S. SUPREME COURT HOLDING'S IN JOHN CUNNINGHAM V. CALIFORNIA, NO# 05-6551-2007 U.S. LEXIS 1324 - DECIDED JANUARY 22, 2007, AND BLAKELY V. WASHINGTON, 124 S. CT. 2531 (2004) - "SENTENCE ENHANCED BASED ON FACTS THAT WERE NOT CHARGED TO AND FOUND BY JURY." THUS A VIOLATION OF THE RIGHT TO TRIAL BY JURY GUARANTEED BY THE 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS OF THE U.S. CONSTITUTION.

(SECTION B' CONTINUED)

PRESCRIBED ENHANCEMENT AND PROVIDE PETITIONER THE APPROPRIATE (50%) CREDITS ON THE (4) YEAR MID-TERM FOR SECTION 273A(A), IF SUCH REQUEST IS DENIED IN THIS PROCESS CDCR SHALL NOTIFY PETITIONER'S SENTENCING COURT WHO MUST, BY LAW:

1) EITHER VACATE ENTIRE SENTENCE PRESCRIBED, AND PROVIDE PETITIONER A TRIAL BY JURY OF HIS PEERS RE: INDICTMENT IN ACTION # 210721; 2) PROVIDE PETITIONER A TRIAL BY JURY RE: SECTION 12022.7(A) ENHANCEMENT AND PRESCRIBE THE LOWER TERM OF (2) YEARS FOR SECTION 273A(A); 3) VACATE THE ENHANCEMENT 12022.7(A) PORTION OF PRESCRIBED SENTENCE AND DIRECT 'CDCR' TO APPLY APPROPRIATE (50%) SENTENCING CREDITS UNDER THE LAW, AFTER COURT RE-PREScribes THE LOW TERM OF (2) YEARS FOR SECTION 273A(A) AND RELEASE PETITIONER ON PAROLE FOR A DISCHARGE DATE OF MAY 19, 2007, AS PETITIONER WILL HAVE COMPLETED HIS PAROLE PERIOD WHILE INCARCERATED ON THE CURRENT IMPROPERLY PRESCRIBED SENTENCE. AS OF THE DATE OF THIS 602 APPEAL, PETITIONER ONLY HAS A PERIOD OF (3) MONTHS AND (15) DAYS OF PAROLE LEFT TO DO ON THE PROPER SENTENCE THE COURT, BY LAW, SHOULD HAVE PRESCRIBED WITHOUT THE 12022.7(A) ENHANCEMENT. WITH THE CURRENT (4) YEARS FOR SECTION 273A(A), @ (50%) PETITIONER WOULD HAVE A PERIOD OF ONLY (2) YEARS AND (3) MONTHS (15) DAYS ON PAROLE. PETITIONER DEMANDS BOTH THE CDCR AND THE SUPERIOR COURT OF SANTA CLARA COUNTY TO ISSUE THE GUIDELINES OF THE UNITED STATES SUPREME COURT'S ~~THE~~ HOLDINGS AS DESCRIBED ABOVE. SUCH ACTIONS MUST BE IMMEDIATE.



## Memorandum

Date: 02/9/2007  
To: Greene, Phillip T-98702  
Subject: CDC 602 Response (Informal Level)

RECEIVED BY I/M GREENE  
ON 2/23/07.  
*Phillip Greene*

### Appeal Denied

Upon review and investigation of your CDC 602 the following facts were found:

I/M Greene, there is nothing that can be done or will be done by The Department of Corrections and Rehabilitation. Correctional Case Records Analyst cannot change one thing on your sentence. That is the bottom line. Correctional Case Records Analyst take direction only from certified legal paperwork from the Superior Courts of California. The Santa Clara County Superior Court and Judge Kevin Murphy is the only legal entities that can do anything for you on your sentencing. It is your responsibility alone to write the Judge and the Court if you have a problem with your sentencing. Once again you are challenging your credits per 2933.1, wanting to earn 50% off your sentence. You withdrew your CDC 602 appeal dated 11/30/2006 at the second level formal appeal on this subject. This is a mute subject now. But to remind you, nothing can be done on this subject either, unless certified legal documents arrive from the Superior Court striking the enhancement of PC 12022.7(A). Until then you are sentenced under PC 2933.1 for a violent felony enhancement at 15% credit. Your EPRD will remain at 05/06/2009.

Because of the facts presented this appeal is denied. CDCR will not vacate any term sentenced by the Superior Courts of California.

*D. Prock*

D. Prock  
Correctional Case Records Analyst

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**FILED**

APR 02 2007

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

KIRI TORRE  
Chief Executive Officer/Clerk  
Superior Court of CA, County of Santa Clara  
By *[Signature]* Deputy

In re

PHILIP J. GREENE,

On Habeas Corpus

No.: 210721

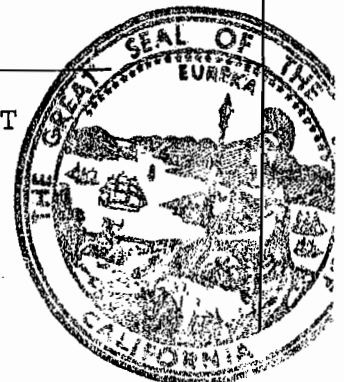
ORDER

Mr. GREENE, (hereinafter Petitioner,) has filed a habeas corpus petition in which he seeks relief based on the United States Supreme Court's holding, in *Cunningham v. California* (2007) 127 S.Ct. 856, that *Blakely v. Washington* (2004) 542 U.S. 296 applies to California's sentencing practices when the upper, or aggravated, term is imposed. However in Petitioner's case the upper/aggravated term was not imposed. The *Cunningham/Blakely* rule does not apply to enhancements that are separately charged and found to be true and which may be imposed consecutively. (See *People v. Hernandez* (2007) LEXIS 257.) Accordingly, all requested relief or action is denied.

DATED: March 15, 2007

*[Signature]*  
LINDA R. CONDRON  
JUDGE OF THE SUPERIOR COURT

cc: Petitioner  
District Attorney  
Research (3-13A)  
CJIC



<p>THE SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA</p> <p><u>Plaintiff:</u> PEOPLE OF THE STATE OF CALIFORNIA</p> <p><u>Defendant:</u> PHILIP J. GREENE</p>	<p>(ENDORSED) <b>FILED</b> APR 02 2007</p> <p>KIRI TORRE Chief Executive Officer/Clerk Superior Court of CA County of Santa Clara</p> <p>BY <u>Jennifer E. Vigna</u> CLERK</p>
<p>PROOF OF SERVICE BY MAIL OF: ORDER ON HABEAS CORPUS</p>	<p>CASE NUMBER: 210721</p>

CLERK'S CERTIFICATE OF MAILING: I certify that I am not a party to this case and that a true copy of this document was mailed first class postage fully prepaid in a sealed envelope addressed as shown below and the document was mailed at SAN JOSE, CALIFORNIA on 04-02-07. I declare under penalty of perjury that the foregoing is true and correct.

KIRI TORRE, Chief Executive Officer/Clerk

By Jennifer E. Vigna Clerk  
Jennifer E. Vigna

Philip J. Greene, Petitioner  
CDC #T-98702  
Avenal State Prison  
P.O. Box 9  
Avenal, CA 93204

Office of the District Attorney  
70 W. Hedding Street  
San Jose, CA 95110  
\*Placed in inter-office box

Research  
\*Placed in inter-office box

CJIC  
\*Placed in inter-office box

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14 COURT OF APPEAL DECISION  
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COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.  
**FILED**

JUN 8 - 2007

MICHAEL J. YERLY, Clerk

In re PHILIP J. GREENE,  
  
on Habeas Corpus.

H031474  
(Santa Clara County  
Super. Ct. No. 210721)

By \_\_\_\_\_  
DEPUTY

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Bamattre-Manoukian, Acting P.J., and Mihara, J., participated in this decision.)

Dated JUN 8 - 2007 BAMATTRE-MANOUKIAN, J. Acting P.J.



EXHIBIT E  
CALIFORNIA SUPREME COURT  
RULING 12/12/07

**S153879**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re PHILIP J. GREENE on Habeas Corpus

---

The petition for writ of habeas corpus is denied.

**SUPREME COURT  
FILED**

**DEC 12 2007**

**Frederick K. Ohlrich Clerk**

---

**Deputy**

**GEORGE**

---

Chief Justice

PROOF OF SERVICE BY MAIL

I THE UNDERSIGNED, CERTIFY THAT I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE. THAT I  
CAUSED TO BE SERVED A COPY OF THE FOLLOWING DOCUMENT:

ENTITLED: PETITION FOR WRIT OF HABEAS CORPUS ~~WIT~~


W/INFORMA PAUPER'S APPLICATION

BY PLACING THE SAME IN AN ENVELOPE, SEALING IT BEFORE A CORRECTIONAL OFFICER,  
AND DEPOSITING IT IN THE [UNITED STATE MAIL] AT AVENAL STATE PRISON AND ADDRESSED IT TO THE  
FOLLOWING: CONSIDERED FILED ON DATE BELOW PER PRISON MAILBOX RULE:  
FORD V. HUBBARD, 330 F.3d. 1086 (9TH CIR. 2005)

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
ATTN: CLERK OF THE COURT  
450 GOLDEN GATE AVENUE, 16TH FL.  
SAN FRANCISCO, CA. 94102

EXECUTED ON JANUARY, 22, 20 08 AT AVENAL STATE PRISON, AVENAL, CALIFORNIA

I, PHILIP J. GREENE, DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAW  
OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

  
SIGNATURE OF DECLARANT

PHILIP J. GREENE  
PRINT NAME OF DECLARANT

PRO PER.

CLOSED, HABEAS, ProSe

**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:06-cv-05551-MMC  
Internal Use Only**

Greene v. Carey  
Assigned to: Hon. Maxine M. Chesney  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)








Date Filed: 09/11/2006  
Date Terminated: 01/03/2007  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus (General)  
Jurisdiction: Federal Question

**Petitioner****Philip Jason Greene**

represented by **Philip Jason Greene**  
California State Prison Solano  
T98702 21C-2-U  
P.O. Box 4000  
Vacaville, CA 95696-4000  
PRO SE

V.

**Respondent****Warden Tom Carey**

Date Filed	#	Docket Text
09/11/2006	 1	PETITION for Writ of Habeas Corpus. Filed by Philip Jason Greene. (aaa, Court Staff) (Filed on 9/11/2006) (Entered: 09/12/2006)
09/11/2006	 2	Letter from Clerk requesting a signed and completed IFP application or filing fee of \$5.00. (aaa, Court Staff) (Filed on 9/11/2006) (Entered: 09/12/2006)
09/25/2006	 3	Letter dated 9/21/06; from Philip J. Green re IFP. (aaa, Court Staff) (Filed on 9/25/2006) (Entered: 09/26/2006)
10/03/2006		Filing fee: \$ 5.00, receipt number 3390853. (aaa, Court Staff) (Filed on 10/3/2006) (Entered: 10/04/2006)
10/11/2006	 4	MOTION for Leave to Proceed in forma pauperis filed by Philip Jason Greene. (aaa, Court Staff) (Filed on 10/11/2006) (Entered: 10/12/2006)
01/03/2007	 5	ORDER OF DISMISSAL; DENYING 4 LEAVE TO PROCEED IN FORMA PAUPERIS. Signed by Judge Maxine M. Chesney on January 3, 2007. (mmcsec, COURT STAFF) (Filed on 1/3/2007) (Entered: 01/03/2007)
01/03/2007		(Court only) ***Civil Case Terminated. Re 5 Order (aaa, Court Staff) (Filed on 1/3/2007) (Entered: 01/08/2007)
01/03/2007	 6	CLERK'S JUDGMENT (far, COURT STAFF) (Filed on 1/3/2007) (Entered: 01/08/2007)



THOMAS J. GREENE  
798202/400-1-1111  
AVENAL STATE PRISON  
P.O. BOX 9  
AVENAL, CA, 95304

AVENAL STATE PRISON  
RECEIVED

08 JAN 25 PM 4:29

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CONFIDENTIAL

RECEIVED

JAN 25 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA  
ATTN: Clerk of the Court  
450 GOLDEN GATE AVE, 16TH FL  
SAN FRANCISCO, CA 94102



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